

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 690 of 1986  
T.A. No.

199

DATE OF DECISION

4.2.92

Shiv Raj Singh

Petitioner

Shri GD Gupta with Shri Rattan Pal Singh Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri B.R. Prashar

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. I.P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? x
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? x
4. Whether it needs to be circulated to other Benches of the Tribunal ? x

(Judgment of the Bench delivered by Hon'ble Shri  
Justice Ram Pal Singh, Vice-Chairman (J).)

### J U D G M E N T

The applicant, while posted in DAP II BN. Delhi as a confirmed Head Costable (Executive), was detailed a Guard in charge with Police escort and took Dev Raj alias Deva, a detainee under National Security Act to J.P.N. Hospital on different dates in year 1981 and 1982 on eight occasions from Tihar Jail for treatment. He was suspended and proceeded departmentally in an enquiry on the allegation that the applicant took unusually long time without justification in keeping the said detainee in the hospital. It was also alleged in the said enquiry that during some of these visits the taxi carrying the detainee was also stopped at R.M.L. Hospital after the detainee was examined and treated at J.P.N. Hospital. It was also alleged in the enquiry that on eight dates the applicant kept the detainee in the hospital from 3 to 6 hours without any justification. For this extraordinary delay, the applicant who was in

of the escort party, did not record any reason in the daily diary. From these circumstances, it was alleged that the detenue Deva was taken by the applicant to some unauthorised places in mala fide manner.<sup>2</sup>

2. The departmental enquiry against the applicant and other constables of the escort party was initiated simultaneously in one proceeding by Shri Narinder Singh, A.C.P., but the applicant failed to join the proceedings, hence the departmental enquiry against the applicant was kept in abeyance, while the proceedings against the constables proceeded separately. In the enquiry against the constables which was conducted by Shri Narinder Singh, A.C.P., the constables were exonerated from the charge. A show cause notice proposing punishment of dismissal from service was issued against the applicant after the conclusion of the enquiry. The punishment proposed was finally reduced to reduction in rank to the rank of the constable and the suspension period was treated as not spent on duty. This order was passed on 14.5.84. The applicant preferred an appeal before the appellate authority for quashing the punishment. The appellate authority in its order reduced the punishment of the reduction in rank to that of forfeiture of 5 years approved service and reduction in his pay from Rs. 284/- p.m. to Rs. 260/- p.m. This order was passed on 15.3.85 (Annexure 'H'). It is this order which is being challenged in this O.A. and the prayer is to quash it. He has also prayed for the suspension period to be ordered as spent on duty.

3. The respondents on notice appeared and controverted the contents of the O.A. They maintain that the charges against the applicant were proved by the prosecution witnesses in the departmental enquiry; that the punishment awarded is already very lenient; that the enquiry was conducted in accordance with Rule 16 of the Delhi Police (Punishment & Appeal) Rules of 1980.

4. Shri G.D. Gupta, learned counsel for the applicant, raised only three points before us:

(i) Copy of the preliminary enquiry report along with the statements of witnesses recorded during the preliminary enquiry were

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not supplied to the applicant and hence the applicant could not contradict the prosecution witnesses in their cross-examination with regard to their previous statements. This, according to him, is against the principles of natural justice vitiating the entire departmental enquiry. According to him, copy of the report of the preliminary enquiry with a copy of the statements of the prosecution witnesses recorded during that enquiry should have been supplied to the applicant.

(ii) The second contention of Shri Gupta is that during the preliminary enquiry, the statements of two doctors were recorded. Copies of the statements of these doctors were not supplied to the applicant, but the statements of these two doctors were relied upon by the Enquiry officer and as no opportunity was afforded to the applicant to cross-examine these two doctors, the principles of natural justice were infringed and it resulted in prejudice to the applicant. These two witnesses are Dr. C.M. Khanijo and Dr. H.S. Yadav of J.P.N. Hospital. Though these witnesses were cited as prosecution witnesses in the departmental enquiry, yet they were not examined by the prosecution, because one of the doctors had left for United States of America and the other could not be traced in spite of the best efforts of the Enquiry Officer. The main contention of Shri Gupta is that in such a situation, the Enquiry Officer should not have relied upon the statements of these two witnesses.

further contended that

(iii) He / the Police official who recorded the statements of these doctors was also not examined by the prosecution and thus the applicant was deprived of a right of cross-examination for elucidating the details and the circumstances in which the statements of these doctors were recorded. The statements were recorded by Shri Darshan Kumar and Shri Darshan Kumar was not produced for cross-examination.

5. The learned counsel for the respondents, Shri B.R. Parashar, could not put up an effective reply to these arguments forwarded by the learned counsel for the applicant.

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6. Preliminary enquiry has been dealt with in Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred as 'Rules'). For convenience, the entire Rule 15 is reproduced below:

"15. Preliminary enquiries. (1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter (s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally precede a departmental enquiry.

(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a Police Officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

(3) The suspected Police Officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witnesses. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer."

According to this Rule, the preliminary enquiry is a fact-finding enquiry and its purpose is to establish the nature of default and identity of the defaulter; to collect prosecution witnesses; to judge quantum of default and to bring relevant documents on record to facilitate a regular departmental enquiry. Where the preliminary enquiry discloses the commission of misconduct, the departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be filed or a departmental enquiry should be held. Sub-rule (3) of this Rule provides that the suspected Police Officer may or may not be present at the preliminary enquiry, but

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when present he shall not cross-examine the witnesses. It further provides that the file of the preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. It further provides that there shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. It further provides that all the statements recorded during the preliminary enquiry shall be signed by the person making them and attested by the Enquiry Officer. A similar provision is provided in Section 161 of the Code of Criminal Procedure where during the course of the investigation, the Investigating Officer is required to record the statements of the witnesses connected with the crime or intended to be produced during the time of the trial. Under Section 173 of the Code of Criminal Procedure, copies of the police diary, statements and other documents are required to be supplied to the accused before the charge is framed. The statements recorded during the investigation form part of the prosecution documents, but can only be used only for the purpose of contradicting the prosecution witnesses if they are examined during the trial. The accused has a right under Section 145 of the Indian Evidence Act to confront the witness with his previous statement, including the previous statement recorded during the course of investigation under Section 161 of the Code of Criminal Procedure, but this procedure of the general law is not applicable to a departmental enquiry. Under the Rules, limited provisions have been made applicable. Some of these provisions have been included so as to conform with the principles of natural justice. As provided in sub-rule (3) of Rule 15, there shall be no bar to the Enquiry Officer bringing on record any other document from the file of the preliminary enquiry if he considers it necessary after supplying copies to the accused. This provision of sub-rule (3) of Rule 15 provides for the supply of a copy to the accused

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only so that he may use the previous statements and other documents in cross-examination of the prosecution witnesses if they are examined during the course of the departmental enquiry. The statements recorded under Section 161 of the Code of Criminal Procedure are not required to be signed by the persons making the statement, but in Rule 15 all the statements recorded during the preliminary enquiry are required to be signed by the persons making the statements which are required to be attested by the Enquiry Officer. Unless the Enquiry Officer conducting the preliminary enquiry proves those statements that he had recorded their statements and the witness has signed the statement in his presence, till then the intention behind the rule is not complied with. Thus, the Officer who recorded the statement of the witness in the preliminary enquiry becomes an important witness, specially where the statements of the witnesses not available during the departmental enquiry are to be taken on record. If the Officer of the preliminary enquiry is examined during the course of the departmental enquiry, then the accused can cross examine this officer with regard to the recording of the statements of those absentee witnesses. If this provision of Rule 15 has not been followed during the departmental enquiry, then it would be against the principles of natural justice for the Enquiry Officer and the disciplinary authority to place reliance upon the signed statements of the absentee witnesses. This guarantee of fair enquiry is provided in Rule 15 of the Rules which can be said that they are based upon the principles of natural justice.

7. Furthermore, sub-rule (ii) of Rule 16 of the Rules provides that the Enquiry Officer is empowered to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a Police Officer superior in rank to the accused officer, or by a magistrate and is either signed by the person making it or has been recorded by such officer during

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an investigation or a judicial enquiry or trial. These provisions of Rule 16 further provide that the Police Officer of superior rank has to record the statements of the absentee witnesses in the preliminary enquiry, and prove <sup>them</sup> before the departmental enquiry and that Police Officer may be cross-examined with regard to the authenticity or correctness of the <sup>statement of</sup> the absentee prosecution witnesses. Sub-rule (iii) of Rule 16 further provides that unsigned statements shall be brought on record only through the statements of the officer or magistrate who had recorded the statement of the witness concerned. It further guarantees the right of the accused that when unsigned statements are offered to be taken on record by the officer who had recorded the statement, then that officer necessarily becomes a witness in the departmental enquiry and the accused officer gets an opportunity to cross-examine that officer.

8. Sub-rule (iii) of Rule 16 further provides that the accused shall be bound to answer any questions which the Enquiry Officer may deem fit to put to him with a view to elucidating the facts referred to in the statements or documents thus brought on record. This provision of the Rules appears to be similar to that of Section 313 of the Code of Criminal Procedure, according to which, after the prosecution witnesses are over, the trial judge shall put the questions to the accused and the accused shall be bound to answer those questions, but there is a bar created in the Code of Criminal Procedure that only with regard to that piece of evidence the accused shall be questioned which is admissible according to law. Close reading of sub-rule (iii) of Rule 16 clearly establishes the intention of the provisions that the officer who had recorded the statements of the absentee witnesses in the preliminary enquiry shall be a prosecution witness so that the accused may get an opportunity to cross-examine him. On perusal of the enquiry report nowhere it appears that Shri Darshan Kumar who had recorded the statements of absentee witnesses was cited as a witness or <sup>was</sup> offered for cross-examination by the accused, during the departmental enquiry.

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9. The apex court in the case of Mohd. Sharif (1982( 2 S.C.C. 376) has laid down that where the statements of the witnesses were recorded during the preliminary enquiry, but were not furnished to the accused at the time of the disciplinary enquiry, then it amounted to denial of reasonable opportunity of defence against the charges. Their Lordships of the apex court further observed that if this principle is not followed in the departmental enquiry, then it can easily be said that the accused was prejudiced in the matter of his defence and any order of dismissal passed thereupon shall be held illegal, void and inoperative. In the light of the apex court's judgment, we are clearly of the view that the applicant was prejudiced in his defence in the departmental enquiry because he was not afforded an opportunity of cross-examining the officer who had recorded the statements of the absentee witnesses during the preliminary enquiry.

10. This view of ours is strengthened in the judgment of the Division Bench of the Bombay High Court in the case of Damodar Shantaram Nadkarni vs. S.E. Sukhtankar (1973 (2) S.L.R. p. 615). The departmental instructions contained in Annexure 'J' dated 1.5.80 in instruction No. (ii) explains that "the officer who had conducted the preliminary enquiry was cited and examined as P.W. but copy of his preliminary report was not furnished by the Enquiry Officer to the defaulter giving him an opportunity to cross-examine the witness. This has affected proper cross-examination of such witness and goes against the principle of natural justice vitiating the departmental enquiry ab initio. Copy of the preliminary enquiry report in such cases should have been supplied suo-moto at the initial stage alongwith the summary of allegations even if no specific request is made by the defaulter." These departmental instructions were also not followed by the Enquiry Officer. As directed in these directions, a copy of the preliminary report should have been supplied to the applicant suo-moto by the Enquiry Officer even without a

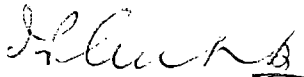
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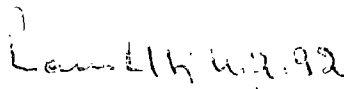


demand from the side of the applicant. We are, therefore, of the view that the entire disciplinary enquiry was vitiated due to the reasons recorded hereinabove.

11. We also observe that this point was raised by the applicant before the appellate authority and no findings were recorded in the appellate order. Thus, the appellate authority has completely failed to apply its mind with regard to the said departmental instructions and the rules.

12. We, therefore, allow this O.A. and quash the orders of the disciplinary authority and also that of the appellate authority imposing the hereinabove penalties upon the applicant. We set aside the penalty imposed upon the applicant, but the disciplinary authority shall not <sup>be</sup> precluded from taking up the departmental enquiry from the stage of the supply of the report of the preliminary enquiry alongwith all the statements and documents to the applicant. After the supply of this preliminary enquiry report to the applicant, the Enquiry Officer may proceed further with the enquiry and complete it according to rules. We direct the respondents to conclude this enquiry within a period of six months from the date of the receipt of a copy of this judgment. With regard to the suspension period, the findings can be given only after the conclusion of the enquiry. Parties are directed to bear their own costs.

  
(I.P. GUPTA)  
MEMBER (A) 4/2/92

  
(RAM PAL SINGH)  
VICE-CHAIRMAN (J)